

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR SUBSTITUTION OF COUNSEL

Although the State has no standing to challenge what attorney represents the defendant, the State may advise the trial court on the law concerning how to apply the law.

The State of Arizona, by and through undersigned counsel, responds to the Defendant's Motion for Substitution of Counsel.

MEMORANDUM OF POINTS AND AUTHORITIES

THE LAW:

The State is aware that it has no standing to object to the Defendant's appointment of counsel. *State v. Evans*, 129 Ariz. 153, 629 P.2d 989 (1981); *Knapp v. Hardy*, 111 Ariz. 107, 523 P. 2d 1308 (1974). However, the State is not precluded from acting as an advisor in assisting the Court on the proper construction and application of the law.

Rule 6, Ariz. R. Crim. P., generally governs the appointment of counsel for defendants and their appearances. In this case, A.R.S. § 13-4013(A)¹ has no application, because that statute deals solely with appointed counsel. Mr. Bernays and Ms. McMath are privately retained attorneys. A.R.S. § 13-4013 (B)² does not mandate that in every case an

¹ § 13-4013. Fee of counsel assigned in criminal proceeding or insanity hearings; appointment of investigators and expert witnesses in capital offense

A. When counsel is appointed by the court and represents the defendant in either a criminal proceeding or insanity hearing, he shall be paid by the county in which the court presides, provided that in those matters where a public defender is appointed, no compensation shall be paid by the county. Compensation for such services rendered to defendant shall be such amount as the court in its discretion deems reasonable, considering the services performed.

² B. When a person is charged with a capital offense the court may on its own initiative and shall upon application of the defendant and a showing that the defendant is financially unable to pay for such services, appoint such investigators and expert witnesses as are reasonably necessary adequately to present his defense at trial and at any subsequent proceeding. Compensation

appointment of an investigator or an expert is required and that the expenditures of public funds may be used for their fees. Rather, the trial court must make findings that (1) defendant is unable to pay for such services himself and (2) that appointment and expenditure is reasonably necessary to present the indigent defendant with an adequate defense. *State v. Knapp*, 114 Ariz. 531, 540-41, 562 P. 2d 704, 713-14 (1977).

The decision to expend public monies to assist the defense rests within the trial court's discretion. *State v. Clabourne*, 142 Ariz. 335, 342, 690 P. 2d 54, 61 (1984). Thus, a defendant may be required to present sufficient reasons that such assistance is necessary for the defendant to present an effective defense. *State v. Apelt*, 176 Ariz. 349, 366, 861 P. 2d 634, 651 (1993).

for such investigators and expert witnesses shall be such amount as the court in its discretion deems reasonable and shall be paid by the county.